REMARKS

Claims 2-15 are pending in the present application. The Office Action rejected claims 2-5 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Office Action also rejected claims 2-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2003/0207245 (hereinafter "*Parker*") in view of U.S. Patent No. 6,233,618 (hereinafter "*Shannon*"). For at least the reasons set forth below, Applicant respectfully traverses these bases for rejection.

1. Doubling Patenting

Applicant makes a note of the provisional doubling patenting rejection and will address it when the rejection is made formal.

2. 35 U.S.C. § 101

The Office Action rejected claims 2-5 under § 101 as being directed to non-statutory subject matter. Claim 2 is a method for filtering and monitoring of data transmission in a multi-level system for a plurality of users operatively connected to the system via a network. The method calls for defining a plurality of levels on a server of the system operatively connected to the network, where at least one level comprises filtering and monitoring, establishing at the server a hierarchy for the plurality of levels, where the hierarchy defines levels that are above other levels and levels that are below other levels, where each level can inherit any filtering and monitoring of levels above, and creating a user account associated with the at least one of the plurality of levels on the server, where

the user account controls filtering and monitoring applied to other user accounts associated with levels below the at least one of the plurality of levels.

As amended, claim 2 calls for a server operatively connected to the network to which the plurality of users is operatively connected. An example of the server is described throughout the written description, including at paragraphs 6, 8, and 44. A plurality of levels, a hierarchy for the plurality of the levels, and a user account associated with at least one of the plurality of levels are all created on or established at the server and are operatively connected to the network as described in paragraphs 8, 17, and 37. Accordingly, the method set forth in claim 2 is tied to another statutory class and is thus directed to statutory subject matter. Claims 3-5 are dependent on claim 2 and, for the same reasons, are directed to statutory subject matter. Applicant respectfully requests withdrawal of the cited rejection.

3. 35 U.S.C. § 103(a)

The Office Action rejected claims 2-15 under 35 U.S.C. § 103(a) as being unpatentable over *Parker* in view of *Shannon*.

As set forth above, claim 2 is directed to a method for filtering and monitoring of data transmission in a multi-level system for a plurality of users operatively connected to the system via a network. The method calls for defining a plurality of levels on a server of the system operatively connected to the network, where at least one level comprises filtering and monitoring, establishing at the server a hierarchy for the plurality of levels,

where the hierarchy defines levels that are above other levels and levels that are below other levels, where each level can inherit any filtering and monitoring of levels above, and creating a user account associated with the at least one of the plurality of levels on the server, where the user account controls filtering and monitoring applied to other user accounts associated with levels below the at least one of the plurality of levels.

In contrast, *Parker* is directed to a modularized course presented to a user via a network. *Parker*, ¶ 8. In *Parker*, professors and teachers are coupled to the Internet in order to interact with the system. *Id*. at ¶ 26. *Parker* describes the database tables and relationships necessary to effect the system. *Id.* at ¶¶ 34-50. *Parker* discloses a roles table that associates a role ID with a role, such as a teacher or professor. *Id*. at ¶ 52. The role table also associates the ID with each role's privileges, such as the ability to assign or change a grade. *Id.*

Parker does not, however, disclose the claimed invention because it fails to disclose at least one element of the method set forth in claim 2. For instance, *Parker* does not disclose a hierarchy of a plurality of levels, where each level can inherit any filtering and monitoring of levels above. In fact, *Parker* is silent as to any hierarchy. Because *Parker* does not disclose a hierarchy, it cannot disclose establishing such a hierarchy at a server operatively connected via a network to a multi-level system. The role table disclosed in *Parker* does not establish a hierarchy defining levels that are above other levels and levels

that are below other levels, and the role table does not disclose the ability of each level to inherit any filtering and monitoring of levels above.

Parker additionally fails to disclose other elements of claim 2. For example, *Parker* does not disclose creating a user account associated with the at least one of the plurality of levels on the server, wherein the user account controls filtering and monitoring applied to other user accounts associated with levels below the at least one of the plurality of levels. As noted above, *Parker* is silent as to the required hierarchy. Accordingly, *Parker* is incapable of disclosing a user account that controls filtering and monitoring applied to other user accounts associated with levels below the level associated with the user account. Nonetheless, *Parker* is silent as to a user account that controls filtering and monitoring and is thus silent as to a user account that controls filtering and monitoring applied to other user accounts. The role table disclosed in *Parker* does not disclose a user account that controls the filtering and monitoring applied to other user accounts associated with levels below the at least one level associated to the user account.

Shannon fails to remedy the deficiencies of *Parker* with respect to the claimed invention. *Shannon* is directed to a network device, such as a proxy server, bridge, router, or firewall, interconnected between a first and second computer network. *Shannon*, col. 3, lines 36-45. The network device includes an access control effected by cross referencing information in a request with access control data in at least one control database. *Id.* at col. 3, line 59 – col. 4, line 5. *Shannon* states that the network device provides access control

based upon the requests made by whom, at what times, and according to different categories of subject matter. *Id.* at col. 4, lines 26-31. *Shannon* discloses, at several instances, one administrator that is responsible for administering an access control policy. *See, e.g., id.* at col. 6, lines 16-27 & col. 8, lines 13-23 (emphasis added). Shannon also states that each client computer may be associated with one or more groups used for access control. *Id.* at col. 7, lines 12-25.

Shannon does not, however, disclose at least one of the elements of claim 2 that are absent from *Parker*. For instance, *Shannon* does not disclose a hierarchy of a plurality of levels, where the hierarchy defines levels that are above other levels and levels that are below other levels, where each level can inherit any filtering and monitoring of levels above. In fact, *Shannon* discloses one administrator responsible for administering an access control policy. Such an administrator teaches away from the claimed method that requires establishing a hierarchy of a plurality of levels defining levels that are above other levels and levels that are below other levels, where each level can inherit any filtering and monitoring of the levels above. Regardless, *Shannon* is silent as to the ability of each level to inherit any filtering and monitoring of levels above.

Moreover, *Shannon* fails to remedy the deficiencies of *Parker* because it fails to disclose other elements of claim 2 that are also not disclosed by *Parker*. For example, *Shannon* does not disclose creating a user account associated with the at least one of the plurality of levels on the server that controls filtering and monitoring applied to other user

accounts associated with levels below the at least one level associated with the user account.

The Office Action appears to recognize that neither *Parker, Shannon*, nor their combination disclose several of the elements set forth in claim 2. That is, when referring to the elements discussed above, the Office Action alleges that these steps of the claimed invention are old and known to one of ordinary skill in the art. Obviously missing from the Office Action is any factual bases for these statements. Applicant assumes that the Office Action intended to take official notice that these elements are old and known to one of ordinary skill in the art, but the Office Action is even silent as to this effect.

"Official notice without documentary evidence to support [such a] conclusion is permissible only in some circumstances." MANUAL OF PATENT EXAMINING PROCEDURE ("MPEP") § 2144.03. "[T]hese circumstances should be rare when an application is under final rejection or action," which is the case at bar. *See id.* "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." *Id.* This, however, is not the case at bar. "It [is] not appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." *Id.* (emphasis in original). Applicant hereby challenges the factual assertion that these elements are old and known.

Accordingly, the Patent Office "must provide documentary evidence in the next Office action if the rejection is to be maintained." *Id*.

Additionally, the Office Action fails to provide adequate support or evidence for the rationale to combine *Parker* with *Shannon*. As explained in more detail below, incorporating the network device of *Shannon* into *Parker* would render it ineffective or inoperable for its intended purpose. For at least this reason, there can be no factual support for a rationale that it would have been obvious to combine *Shannon* with *Parker*. Applicant therefore requests that documentary evidence necessary to support such an allegation be contained in the next action should the rejection be maintained. *See* MPEP § 2144.03. Accordingly, the Office Action has failed to present an acceptable case of obviousness pursuant to 35 U.S.C. § 103(a).

Furthermore, it would not have been obvious to one of ordinary skill in the art to modify *Parker* by adopting the teachings of *Shannon*, as alleged by the Office Action. As set forth above, *Shannon* discloses a network device that is interconnected between a first and second network. *Shannon*, col. 3, lines 35-45. The first network is a LAN, while the second network is a WAN. *Id*. Referring to Figure 1, for instance, *Shannon* discloses the users of the system (50, 51, 52, and 53) connecting to the Internet (45) through the network device. *Shannon* touts the advantages of such a system in several locations. *See, e.g., id.* at col. 6, lines 4-14 & col. 12, lines 16-36.

Parker, on the other hand, discloses a plurality of users, including those on a LAN and those not on the LAN, connected to the system. *Parker*, ¶¶ 21, 24, & 26. Referring to Figure 1, for example, Parker discloses both staff (112) within the LAN and end users (102) outside of the LAN connected to the system. End users (102) are coupled to the Internet in order to connect to the system. *See* Figure 1. Incorporating the network device of *Shannon* into the distance learning system of *Parker* would be ineffective to provide access control for at least the portion of the users coupled to the Internet as disclosed in *Parker*. For instance, a user connected outside of the LAN disclosed in *Shannon*, such as the end users (102) in Figure 1 of *Parker*, would not be subject to the access control policy of the network device disclosed in *Shannon*. This is because their requests would not pass through the device. Accordingly, incorporating the network device of *Shannon* into the learning system of *Parker* would not be an appropriate solution to the problem of access control as described in *Shannon*. Therefore, it would not have been obvious to one of ordinary skill in the art to modify *Parker* by adopting the teachings of *Shannon* to provide access control to users of the claimed invention.

For at least the reasons set forth above, claim 2 is not unpatentable over *Parker* in view of *Shannon*. Claims 3-15 are dependent upon claim 2, recite additional limitations, and are therefore patentable in their respective combinations. Withdrawal of the rejection based on § 103(a) is respectfully requested.

4. Conclusion

As all outstanding issues have been addressed, Applicant respectfully requests favorable action by the Examiner and withdrawal of the cited rejections. The Examiner is invited to contact the undersigned in an effort to discuss and resolve any remaining issues.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP.

/s Jeremy C. Whitley /
Jeremy C. Whitley
Registration No. 58,775
ip@nelsonmullins.com
1320 Main Street | Suite 1700
Columbia, South Carolina 29201
Office: (803) 255-9764
Fax: (803) 255-9831